

As the Examiner is no doubt also aware, it is never proper to make a species-type restriction requirement unless the separately identified species are considered to be clearly unpatentable with respect to each other. See, for example, MPEP §806.04(h).

The Examiner alleges that the inventions defined by claims in Groups I and II are related as sub-combinations disclosed as useable together in a single combination -- but that they are distinct from each other because each has separate utility. Presumably similar statements could be made with respect to any two claims where one of the claims is dependent from the other. In any event, the Examiner has failed to demonstrate a meaningful separate utility in the context of the relevant restriction practice. For example, the subject matter defined by the claims in Group II (e.g., claim 108) must also include all features of its parent claim (i.e., claim 106). In reality, claim 108 merely further defines the directory process of claim 106 by adding additional limitations. Accordingly, even if patentably distinct (i.e., not “obvious” under 35 U.S.C. §103 in view of the parent claim subject matter), the Examiner has therefore failed to demonstrate that the invention of Group II has separate utility from the invention of Group I.

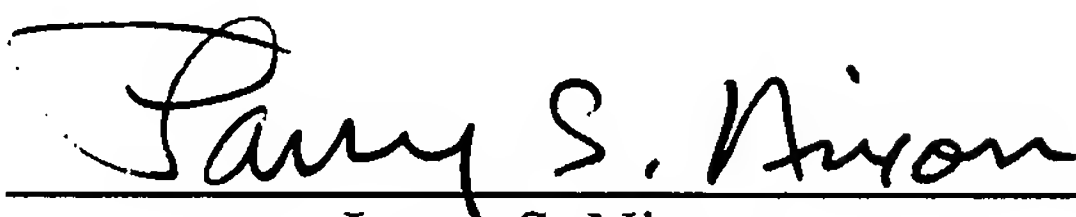
In spite of the above traversal, as required in the outstanding Office Action to be responsive, applicant hereby elects the patentably distinct generic Invention I comprising claims 1-16, 18-30, 32-29, 41-73, 77-79, 102-107 and 124-125. As the Examiner will appreciate, once any generic claim is found allowable, then under the “species-type”

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Appl. No. 10/705,242
November 27, 2007

restriction practice, the patentably distinct Invention II comprising claims 108-123 are also allowable in this same single application.

Respectfully submitted,

NIXON & VANDERHYTE P.C.

By: 
Larry S. Nixon
Reg. No. 25,640

LSN:vc
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100